



## SENATE BILL 810: Regulatory Reform Act of 2012

2011-2012 General Assembly

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| <b>Committee:</b>     |                            | <b>Date:</b>        | July 10, 2012        |
| <b>Introduced by:</b> | Sens. Rouzer, Brown, Davis | <b>Prepared by:</b> | Karen Cochrane-Brown |
| <b>Analysis of:</b>   | Ratified                   |                     | Staff Attorney       |

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**SUMMARY:** *Senate Bill 810 makes several technical and clarifying changes to the Regulatory Reform Act of 2011, as recommended by the Joint Regulatory Reform Committee, as well as a number of other substantive changes.*

### BILL ANALYSIS:

**Section 1.:** This section repeals a provision contained in S.L. 2011-291 to restore the Joint Legislative Administrative Procedure Oversight Committee. This Committee was originally established in 1995 to oversee the administrative procedures of State agencies. It was abolished last year. This section would reestablish the Committee.

**Section 1.1.:** This section modifies appointments to the Mining and Energy Commission, which would be created if Senate Bill 820 becomes law, by authorizing the Speaker and the President Pro Tempore each to recommend a representative of the mining industry and by authorizing the Governor to appoint a member of the Environmental Management Commission, knowledgeable in water and air resource management and a member of the Commission for Public Health, knowledgeable in waste management. Under the current version of the bill, these appointments are reversed.

**Section 2.:** This section clarifies that an agency may not enforce an interpretive statement that has not been adopted as a rule in accordance with the Administrative Procedure Act.

**Section 3.:** This section makes several clarifying changes to G.S. 150B-19.1, which requires that agencies adhere to a number of regulatory principles when developing and drafting rules. The section also adds a new subsection (h) which provides that agencies that are under the supervision of the Governor must obtain a certification from the Office of State Budget and Management that they have complied with the principles. The subsection further provides that agencies within the Council of State other than the Governor must obtain certification from the Rules Review Commission. In addition, both OSBM and the RRC must respond to a request for certification within 20 business days.

**Section 4.:** This section makes a conforming change to delete reference to the certification from the fiscal note section.

**Section 5.:** This section amends a provision related to the time within which the Office of Administrative Hearings must collect filing fees in contested cases. The amendment would allow the Office to adopt rules for accepting payments after a petition has been filed.

**Section 6.:** This section clarifies that only a party, an attorney representing a party, or a representative of the party that has been specifically authorized by law may sign a petition commencing a contested case.

**Section 7.1.:** This section deletes an obsolete reference to an agency making a final decision in a contested case. The Regulatory Reform Act of 2011 granted final decision making authority to administrative law judges.

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**Section 7.2.:** This section authorizes administrative law judges to assess attorneys' fees when an agency has acted arbitrarily or capriciously and substantially prejudiced the petitioner's rights.

**Section 7.3.:** This section makes a clarifying change to a provision of the Regulatory Reform Act of 2011. It clarifies that the Office of Administrative Hearings (OAH) and DENR need not obtain approval from the federal EPA, if it is determined that no approval is necessary to allow OAH to make final agency decisions, as required by law.

**Section 8.1.:** This section amends the effective date for two provisions contained in the Regulatory Reform Act of 2011. With regard to contested cases involving certain federal laws administered by the Department of Environment and Natural Resources, the change to final decision making authority required approval from the federal EPA. The original effective date was the earlier of the date the approval was issued or June 15, 2012. This section extends that date until October 1, 2012.

With regard to contested cases involving Medicaid decisions, DHHS was directed to seek a waiver from the federal government to allow the change to final decision making authority. The provisions became effective January 1, 2012, however, the waiver has not yet been granted. This section extends the effective date until February 1, 2013.

**Sections 8.2. – 8.7.:** These sections make conforming changes to various parts of the State Personnel Act to clarify that appeals are made to the Office of Administrative Hearings rather than the State Personnel Commission.

**Section 9.:** This section reduces the time during which a holder must maintain records related to unclaimed property from ten to five years.

**Section 10.1(a).:** The section directs all State agencies to submit a report of their auditing and examination functions, including any notice requirements, to the Joint Legislative Administrative Procedure Oversight Committee by October 31, 2012.

**Section 10.1 (b).:** This section directs the Department of Labor, in consultation with farm organizations and the Department of Agriculture and Consumer Services, to develop an employer's notice of rights which must be presented before an inspection is conducted on premises engaged in agricultural employment.

**Section 10.2.:** This section eliminates a requirement that agencies report each year on efforts to reduce the incidence of identity theft by limiting the amount of personal information collected by the agency. Instead, agencies must report to the General Assembly any laws which are found to impede the agencies' ability to avoid identity theft.

**Section 10.3.:** This section changes a requirement that State agencies report the number of business licenses issued from a quarterly to an annual basis. The reports are made to the Department of Commerce.

**Section 11.:** This section would amend the definitions that apply to a number of environmental statutes to provide that the discharge of waste into waters of the State does not include the release of air contaminants (particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof) into the outdoor atmosphere.

**Section 12.:** This section would repeal existing legislation that requires the Commission for Public Health to adopt rules for the testing of new drinking water wells for the presence of certain volatile organic compounds or VOCs. Section 12 would instead authorize the Commission for Public Health to adopt such rules if the Commission finds that testing for VOCs is necessary to protect public health.

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Section 12 would also provide certain factors that the Commission should consider if it chooses to adopt VOC testing rules.

**Section 13.:** This section would direct the Department of Environment and Natural Resources to track and report on the processing times of all permit applications it receives under the One-Stop for Environmental Permits Program and under the Express Permit and Certification Reviews. The Department must report by March 1 of each year on the tracking times to the Fiscal Research Division and the Environmental Review Commission.

This section also directs the Department to inventory all permits, licenses, and approvals it issues, and to provide a list to the Environmental Review Commission by January 15, 2013, along with a recommendation as to which permits, licenses, or approvals should be subject to a tracking requirement.

**Section 14.:** This section would delay the effective date for compliance with wading pool fencing requirements from July 1, 2012 to January 1, 2013. This section becomes effective July 1, 2012.

**Section 15.1.:** This section would direct the Commission for Public Health to amend its rules governing the duration of permits for sanitary landfills and transfer stations in order to provide owners and operators of landfills and transfer stations the option for longer term permits and permit review periods.

**Section 15.2.:** This section amends the definition of a "Port Enhancement Zone" to include an area that is comprised of part or all of a census tract.

**Section 16.1.:** This section exempts Certified Roadside Farm Markets from certain building code requirements.

**Section 16.2.:** This section would allow mobile food units that meet all of the sanitation requirements of a permitted commissary to obtain a permit without having a restaurant or a commissary that serves as its base of operation.

**EFFECTIVE DATE:** Except as otherwise provided, this act is effective when it becomes law.

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